

48. (Amended) The promoter of claim 1, wherein the promoter comprises [the nucleic acid sequence shown in] nucleotides 180-853 of SEQ ID NO: 17.

52. (Reiterated) The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 80% sequence identity to SEQ ID NO: 17.

53. (Reiterated) The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 90% sequence identity to SEQ ID NO: 17.

54. (Reiterated) The promoter of claim 1, wherein the promoter comprises the nucleic acid sequence shown in SEQ ID NO: 17.

### Remarks

#### ***Restriction Requirement***

As noted above, Applicants elect Group I, SEQ ID NO: 17, as well as subsequences thereof.

The Examiner notes that the claim dependencies should be changed because the independent claim is to the shortest sequence (nucleotides 667-853 of SEQ ID NO: 17), and dependent claims are drawn to the longer sequence (SEQ ID NO: 17). Applicants respectfully disagree and request reconsideration. Independent claim 1 is directed to a promoter sequence that is at least 80% identical to nucleotides 667-853 of SEQ ID NO: 17. Therefore, this claim is broader than a claim directed to a sequence comprising a longer sequence, such as the full sequence shown in SEQ ID NO: 17.

#### ***Amendment***

By this Amendment, claims 17, 18, 22-29 and 49-51 are cancelled due to the restriction requirement. No claims are added. Therefore, claims 1, 7-16, 19-21, 30-37, 39-48 and 52-54 are now pending. (Due to a misnumbering in the previous amendment, there is no claim 38).

Claims 1 and 34-48 were amended, to clarify the claims. Support can be found throughout the specification, for example page 4, lines 8-26; page 9, line 13 – page 10, line 6; page 19, line 1 – page 26, line 28; page 32, line 18 – page 33, line 16; SEQ ID NOS: 17 and 22-25; and FIG. 3.

Claim 14 was amended to remove redundant claim language.

Therefore, no new matter is added by these amendments.

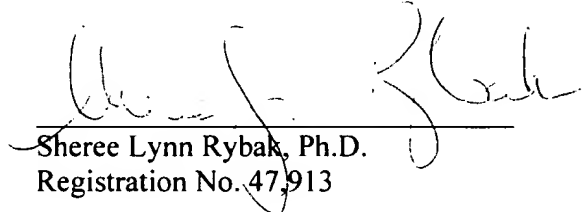
No amendment was made in response to prior art, nor was any amendment made to narrow the scope of any claim.

If there are any questions, the Examiner is invited to telephone the undersigned at the telephone number listed below.

Respectfully submitted,

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**Marked-up Version of Amended Claims  
Pursuant to 37 C.F.R. §§ 1.121(b)-(c)**

1. (Twice Amended) A recombinant promoter, capable of driving expression of a transgene operably linked to the promoter, wherein the promoter comprises a nucleic acid sequence that shares at least 80% sequence identity to nucleotides 667-853 of SEQ ID NO: [25] 17.

14. (Twice Amended) The plant cell of claim 12, wherein the plant cell is obtained from a plant selected from the group consisting of maize, wheat, rice, millet, tobacco, sorghum, rye, barley, brassica, [sunflower,] seaweeds, lemna, oat, soybean, cotton, legumes, rape/canola, alfalfa, flax, [sunflower, safflower, brassica, cotton, flax,] peanut, and clover; [lettuce, tomato,] cucurbits, cassava, [potato, carrot, radish, pea, lentil, cabbage, cauliflower, broccoli, Brussel sprouts, peppers, other] vegetables, [citrus, apples, pears, peaches, apricots,] walnuts, [other] fruit trees, [orchids, carnations, roses, other] flowers, cacao; [poplar, elms, other] deciduous trees, [pine, Douglas-fir, spruce, other] conifers, turf grasses, cacao, rubber trees and members of the genus *Hevea*.

17. (Cancel) [A protein, expressed according to the method of claim 15.]

18. (Cancel) [The protein of claim 17, wherein the protein is a cationic peptide.]

22. (Cancel) [A recombinant promoter, comprising at least eight promoter elements selected from the group consisting of E-box motifs (SEQ ID NO: 1), ERE elements (SEQ ID NO: 20), AT-rich regions (SEQ ID NO: 3), MRE elements (SEQ ID NO: 21), ACGT core elements (SEQ ID NO: 4), and duplicates thereof, wherein the promoter displays promoter activity.]

23. (Cancel) [The recombinant promoter of claim 22, wherein the promoter comprises at least ten promoter elements.]

24. (Cancel) [The recombinant promoter of claim 22, comprising the following promoter elements: 3'-ERE element (SEQ ID NO: 20), AT-rich region (SEQ ID NO: 3), ERE element (SEQ ID NO: 20), ERE element (SEQ ID NO: 20), E-box motif (SEQ ID NO: 1), MRE element (SEQ ID NO: 21), ACGT core element (SEQ ID NO: 4), ACGT core element (SEQ ID NO: 4), and ACGT core element (SEQ ID NO: 4)-5'.]

25. (Cancel) [A vector, comprising the promoter of claim 22 operably linked to an ORF.]
26. (Cancel) [A host cell, comprising the vector of claim 25.]
27. (Cancel) [A transgenic plant, comprising the vector of claim 25.]
28. (Cancel) [The transgenic plant of claim 27, wherein the transgenic plant is selected from the group consisting of maize, wheat, rice, millet, tobacco, sorghum, rye, barley, brassica, sunflower, seaweeds, lemna, oat, soybean, cotton, legumes, rape/canola, alfalfa, flax, sunflower, safflower, brassica, cotton, flax, peanut, and clover; lettuce, tomato, cucurbits, cassava, potato, carrot, radish, pea, lentil, cabbage, cauliflower, broccoli, Brussel sprouts, peppers, other vegetables, citrus, apples, pears, peaches, apricots, walnuts, other fruit trees, orchids, carnations, roses, other flowers, cacao; poplar, elms, other deciduous trees, pine, Douglas-fir, spruce, other conifers, turf grasses, cacao, rubber trees and members of the genus *Hevea*.]
29. (Cancel) [The vector of claim 25, wherein the ORF encodes a cationic peptide.]
34. (Amended) The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 90% sequence identity to nucleotides 667-853 of SEQ ID NO: [25] 17.
35. (Amended) The promoter of claim 1, wherein the promoter comprises [the nucleic acid sequence shown in] nucleotides 667-853 of SEQ ID NO: [25] 17.
36. (Amended) The promoter of claim 1, wherein the promoter comprises at least 20 consecutive nucleic acid residues of a nucleic acid sequence sharing at least 80% sequence identity to nucleotides 667-853 of SEQ ID NO: [25] 17.
37. (Amended) The promoter of claim 1, wherein the promoter comprises at least 20 consecutive nucleic acid residues of [the nucleic acid sequence shown in] nucleotides 667-853 of SEQ ID NO: [25] 17.

39. (Amended) The promoter of claim 1, wherein the promoter comprises at least 40 consecutive nucleic acid residues of a nucleic acid sequence sharing at least 90% sequence identity to nucleotides 667-853 of SEQ ID NO: [25] 17.

40. (Amended) The promoter of claim 1, wherein the promoter comprises at least 40 consecutive nucleic acid residues of [the nucleic acid sequence shown in] nucleotides 667-853 of SEQ ID NO: [25] 17.

41. (Amended) The promoter of claim 1, wherein the promoter comprises at least 60 consecutive nucleic acid residues of a nucleic acid sequence sharing at least 90% sequence identity to nucleotides 667-853 of SEQ ID NO: [25] 17.

42. (Amended) The promoter of claim 1, wherein the promoter comprises at least 60 consecutive nucleic acid residues of [the nucleic acid sequence shown in] nucleotides 667-853 of SEQ ID NO: [25] 17.

43. (Amended) The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 80% sequence identity to nucleotides 398-853 of SEQ ID NO: [24] 17.

44. (Amended) The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 90% sequence identity to nucleotides 398-853 of SEQ ID NO: [24] 17.

45. (Amended) The promoter of claim 1, wherein the promoter comprises [the nucleic acid sequence shown in] nucleotides 398-853 of SEQ ID NO: [24] 17.

46. (Amended) The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 80% sequence identity to nucleotides 180-853 of SEQ ID NO: [23] 17.

47. (Amended) The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 90% sequence identity to nucleotides 180-853 of SEQ ID NO: [23] 17.

48. (Amended) The promoter of claim 1, wherein the promoter comprises [the nucleic acid sequence shown in] nucleotides 180-853 of SEQ ID NO: [23] 17.

49. (Cancel) [The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 80% sequence identity to SEQ ID NO: 22.]

50. (Cancel) [The promoter of claim 1, wherein the promoter comprises a nucleic acid sequence sharing at least 90% sequence identity to SEQ ID NO: 22.]

51. (Cancel) [The promoter of claim 1, wherein the promoter comprises the nucleic acid sequence shown in SEQ ID NO: 22.]